

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACS Wireless)	File Numbers: EB-04-AN-024
Anchorage, Alaska)	EB-04-AN-027
)	
Registrant of Antenna Structures)	NAL/Acct. No.200532780001
ASR #1022129, Kasilof, Alaska)	FRN 0001567940
ASR #1006025, Soldotna, Alaska)	

FORFEITURE ORDER

Adopted: December 21, 2005

Released: December 23, 2005

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to ACS Wireless ("ACS") for willful and repeated violation of Section 17.57 of the Commission's Rules ("Rules").¹ On December 8, 2004, the Enforcement Bureau's Anchorage Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$6,000 to ACS after determining that ACS failed to immediately notify the Commission of a change in the ownership information of the Antenna Structure Registrations ("ASR's") for the above-referenced antenna structures. In this *Order*, we consider ACS's arguments that despite the violation, the Commission was still able to contact ACS, as ACS was the site manager for the structures; that the violation was inadvertent, as ACS believed it had updated the ASR's for these structures; and that ACS has a history of overall compliance with the Commission's Rules.

II. BACKGROUND

2. On July 29, 2004, agents from the Anchorage Resident Agent Office inspected antenna structures #1022129 and #1006025. At the time of inspection, the ASR's listed the Municipality of Anchorage, d/b/a/ Mactel, Inc., as the registered owner. The agents observed, at each antenna structure site, a posted sign indicating ACS Wireless as the site manager.

3. On September 21, 2004, an Anchorage agent sent ACS two Letters of Inquiry, requesting further information concerning the ownership of the two antenna structures. ACS replied on October 18, 2004.² In its Responses, ACS admitted to acquiring ownership of antenna structures #1022129, and #1006025 on May 14, 1999. ACS also admitted that it was aware of the requirement to notify the Commission upon a change in antenna structure ownership information for structures assigned an ASR number. ACS stated that in 1999, it hired a number of people to address the numerous name changes and ownership changes resulting from ACS's acquisition of four local exchange companies, a wireless company, and a long distance company. ACS asserted that it believed appropriate steps were taken to indicate the appropriate ownership of its numerous entities but that some changes were overlooked or missed. ACS also indicated that on October 13, 2004, it filed an FCC Form 854 for each of the antenna

¹47 C.F.R. § 17.57.

²Letters from ACS to the Anchorage Resident Agent Office (October 18, 2004).

structures to update the ownership information for each structure.³ On November 1, 2004, an Anchorage agent reviewed the Commission ASR database and confirmed the ASR's accurately reflected ACS as the current owner of antenna structures #1022129, and #1006025.

4. On December 8, 2004, the Anchorage Office issued a *NAL* in the amount of \$6,000 to ACS.⁴ In the *NAL*, the Anchorage Office found ACS apparently willfully and repeatedly failed to immediately notify the Commission of a change in the ownership information of the ASR's for the above-referenced antenna structures. ACS filed a response to the *NAL* on January 11, 2005 ("*Response*"). In its *Response*, ACS requests that the forfeiture be cancelled or reduced. ACS states that it first became aware that the antenna structures were not registered when it received the LOI from the Anchorage Office. It then investigated the matter and corrected the ASR ownership information for the two structures. ACS argues that the fact that it was site manager for each antenna site made "easy contact" with ACS available to the Anchorage agents.⁵ ACS also argues that its violation was not conscious or deliberate and that it believed in good faith that it had updated all of its ASR's. Finally, ACS argues that it has a history of overall compliance with the Commission's Rules and, therefore, is entitled to a reduced forfeiture amount.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining ACS's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹

6. Section 17.57 of the rules requires the owner of an antenna structure to immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.¹⁰ The Commission requires antenna structure owners to maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.¹¹ We first address ACS's argument that the fact that it was the site manager made "easy contact" available to the Anchorage agents. In the definition of antenna structure owner, Section 17.2(c) of the Rules specifically states that "[n]otwithstanding any agreements

³See ASR File Numbers A0400123 and A0400118, filed October 13, 2004.

⁴*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532780001 (Enf. Bur., Western Region, Anchorage Office, released December 8, 2004).

⁵ACS states that the former owner of the structures, Mactel, has undergone a name change in recent years and now goes by "d/b/a ACS Wireless." ACS states that the name Mactel is synonymous with ACS Wireless, Inc.

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. § 1.80.

⁸12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

⁹47 U.S.C. § 503(b)(2)(D).

¹⁰47 C.F.R. § 17.57. Section 303(q) of the Act gives the Commission authority to regulate certain antenna structures if and when such structures constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. 47 U.S.C. § 303(q).

¹¹See, e.g., *Spectrasite Communications, Inc.* 18 FCC Rcd 22799, 22800 (2003).

made between the owner and any entity designated by the owners to maintain the antenna structure, the owner is ultimately responsible for compliance”¹² It is therefore incumbent upon the owner of the antenna structure to ensure that they can be reached immediately when a compliance issue arises, hence, the requirement that the new owner immediately update the ownership information on a structure’s ASR. There is no requirement that the Commission staff, when trying to contact a structure owner, contact the site manager or any other party. A failure to update the ownership information for an antenna structure requires the Commission staff to engage in additional research to ascertain the ownership and the responsibility for any violation. Time is often of the essence in these situations when lights have ceased to be lit and public safety is at issue. Consequently, we find no merit to this argument.

7. We next address ACS’s argument that it believed in good faith that it had updated all of the ASR’s for its antenna structures and that upon notification by the Commission of the errors, it corrected the ownership records. ACS acknowledges that it did not notify the Commission of the ownership change for the antenna structures until after it received the LOI from the Anchorage Office. Generally, we will not downwardly adjust or cancel forfeitures where the violator has not instituted corrective measures until after it receives notice from the Commission regarding the violation.¹³ We note that in its responses to the Anchorage Office’s LOI’s, ACS states that it acquired these antenna structures on May 14, 1999, indicating that the violation had been ongoing for five years when ACS received the LOI’s. Therefore, this argument is without merit as well. Finally, ACS argues that it has an overall history of compliance with the Commission’s Rule and therefore, a reduction in the forfeiture amount is warranted. A review of the Commission’s records reveals, however, that ACS and its associated entities previously have been found in violation of the Commission’s Rules.¹⁴ Consequently, no reduction is warranted.

8. We have examined ACS’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that ACS willfully and repeatedly violated Section 17.57. However, we note that antenna structure #1006025 is not mandated by its ASR to be painted or equipped with specific types of lighting to ensure air safety.¹⁵ We therefore cancel the forfeiture as to antenna structure #1006025. Considering the entire record and the factors listed above, we find that a \$3,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, ACS Wireless **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,000 for willfully and repeatedly violating Section 17.57 of the Rules.¹⁶

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified,

¹²Section 17.2(c) of the Rules, 47 C.F.R. §17.2(c).

¹³See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 – 76 (2002).

¹⁴See, e.g., *ACS Television, L.L.C.*, 17 FCC Rcd 14586 (EB 2002) (Issuing a \$11,000 forfeiture against ACS Television, L.L.C. for willful violation of Section 74.780, 73.3538(a)(1) and 73.3538(a)(4) of the Rules); *Notice of Violation: ACS of Anchorage License Sub, Inc.*, NOV No. V20053278002, (Enf. Bur., Western Region, Anchorage Resident Agent Office, released October 12, 2004.)

¹⁵See Section 17.23 of the Rules, 47 C.F.R. § 17.23 (Antenna structures must conform to the Federal Aviation Administration’s (“FAA’s”) painting and lighting recommendations set forth on the structure’s FAA determination of “no hazard”). See n. 10, *supra*.

¹⁶47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.57.

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to ACS Wireless, 600 Telephone Avenue, Anchorage, Alaska 99503.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁷47 U.S.C. § 504(a).

¹⁸See 47 C.F.R. § 1.1914.